

FILED
MISSOULA, MT
2006 SEP 15 PM 1 37
BY PATRICK E. DUFFY
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

THOMAS E. TUCKER, JR.,)	CV 05-193-M-DWM
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
UTAH STATE GOVERNOR, et al,)	
)	
Defendants.)	
)	

United States Magistrate Judge Jeremiah C. Lynch entered his Findings and Recommendation in this matter on August 21, 2006. Tucker timely objected and is therefore entitled to de novo review of the record. 28 U.S.C. § 636(b)(1) (2006). Upon review of the Findings and Recommendation I concur with Judge Lynch.

Tucker moved to proceed *in forma pauperis* under 42 U.S.C. § 1983. The question before the Court is whether Tucker's Complaint passes the preliminary screening process. Pursuant to 28 U.S.C. §§ 1915(e), 1915(A)(a) and (b); 42 U.S.C. § 1997e(c)(1); and *Lopez v. Smith*, 203 F.3d 1122 (9th Cir. 2000), Judge Lynch found that the Complaint failed to state a cognizable

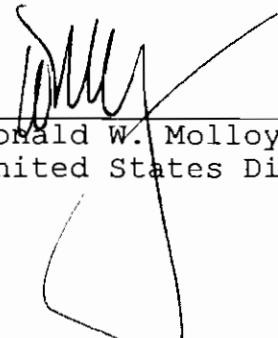
claim. I agree.

The heart of Tucker's allegation is his assertion that his rights were violated when Defendants did not take action to prevent him from the effects of legal allegations made by Aleese Sobrio in Montana and Utah. As Judge Lynch observed, the Defendants do not have a constitutional duty to protect Tucker from legal actions against him. The Complaint does not state that anyone else violated his constitutional rights. Consequently, the Complaint does not state a claim on the given set of facts and amending the pleading will not change this.

In his objection Tucker asserts that the dismissal of the Complaint will send a "message" to Utah officials that they do not have to abide by the Constitution, but here they have no constitutional obligation and so Tucker is mistaken.

Accordingly, IT IS HEREBY ORDERED that I adopt Judge Lynch's Findings and Recommendation in full (dkt #10): Plaintiff's Complaint (dkt #1) is DISMISSED WITH PREJUDICE. Plaintiff is advised that this action counts as one strike pursuant to 28 U.S.C. § 1915(g).

DATED this 15 day of September, 2006.


Donald W. Molloy, Chief Judge
United States District Court